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March 6, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0428

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") for continued access authorization. This decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should be restored.

I. APPLICABLE REGULATIONS

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

II. BACKGROUND

During a reinvestigation conducted in December 2005, the Local Security Office (LSO) of the DOE facility discovered that the Individual had been treated at a Veterans Administration Hospital from February 2000 through April 2005 for Bipolar Disorder. The LSO then referred the Individual to a DOE-contractor Psychologist (the DOE Psychologist) to be evaluated. In her report dated April 12, 2006, the DOE Psychologist opined that the Individual suffers from

Bipolar Disorder, Not Otherwise Specified, and Personality Disorder, Not Otherwise Specified, and Intermittent Explosive Disorder, By History.¹

In June 2006, the LSO informed the Individual that his history of mental illness and the DOE Psychologist's evaluative report constituted derogatory information that created a substantial doubt as to his continued eligibility for an access authorization under 10 C.F.R. § 710.8(h) (Criterion H). June 2006 Letter from Manager, Personnel Security Division, to Individual (Notification Letter).

A hearing was held in this matter. At the hearing, DOE presented one witness, the DOE Psychologist. The Individual offered his own testimony, as well as that of a psychiatrist who performed a recent evaluation of his condition (Evaluative Psychiatrist), the psychiatrist who is currently treating him (Treating Psychiatrist), his employment supervisor, and his wife.² The DOE has submitted 13 exhibits (Ex. 1-13) for the record. The Individual submitted nine exhibits (Ind. Ex. A-I).

III. FACTUAL FINDINGS

The facts in this case are essentially not in dispute. A brief summary is provided below.

In the mid-1980's, the Individual was arrested after a domestic violence incident. Ex. 7 at 25, 28. The Individual attended anger management classes from approximately 1985 through the late 1980's. Ex. 5 at 27. During this time, various "triggers" would cause the Individual to become enraged. Ex. 7 at 19-20; Ex. 5 at 28-29.

In 1991, because of the Individual's anger management problems and another domestic violence incident, the Individual, who was enlisted in the U.S. military, requested that he be evaluated at a military hospital. Ex. 5 at 29. At the hospital, the Individual was diagnosed as suffering with Intermittent Explosive Disorder. Ex. 3 at 3. He was prescribed carbamazepine and his incidents of "explosive behavior" stopped. Ex. 3 at 3; Ex. 5 at 25. The Individual continued to see psychiatrists and other medical professionals to treat the Intermittent Explosive Disorder. Ex. 5 at 21; Ex. 13 at 3. The Individual received an honorable discharge from the military in 1992. Ex. 6 at 3. In 1995, the Individual was diagnosed as also suffering from Bipolar Disorder. Ex. 6 at 3. At this point, the Individual was also prescribed lithium carbonate. Ex. 6 at 3. In June 1999, the Individual applied for and was placed on a waiting list for a psychiatric care provider in the VA Health Care System. Ex. 10 at 3. In January 2000, the Individual continued his treatment at a VA Hospital for his Bipolar illness.³ Ind. Ex. A at 47; Ex. 3 at 4. In 2002, the Individual reported to a VA psychiatrist during a follow-up examination that he had some "serious" Bipolar symptoms three months prior to the examination but that he was now (at the time of the examination) doing "quite well."⁴ Ind. Ex. A at 36.

¹ The DOE Psychologist also diagnosed the Individual as "Child Victim of Physical Abuse."

² With agreement of the parties, the DOE Psychologist and the Treating Psychiatrist were allowed to hear all of the testimony offered at the hearing and to ask questions of the witnesses.

³ The Individual is currently being treated with carbamazepine, lithium carbonate and ziprasidone. Ind. Ex. at 1.

⁴ In a 2006 PSI, the Individual described these symptoms. The Individual's mind "would race" during the week and subsequently on the weekends he would sleep 12 to 14 hours a day. Ex. 5 at 45. The Individual also stated that this episode may have been the result of seasonal depression triggered by the onset of winter. Ex. 5 at 46.

During an investigation in 2000 to receive access authorization, the Individual disclosed his past psychiatric history and the LSO requested an evaluation of the Individual by a DOE-contractor psychiatrist (DOE Psychiatrist). After examining the Individual, the DOE Psychiatrist, in his 2000 Report, diagnosed the Individual as suffering from “Bi-Polar Disorder by history” and “Intermittent Explosive Disorder by history.” Ex. 6 at 6. During this evaluation, the Individual stated that he experienced incidents of mania and depression. Ex. 6 at 3. The Individual also stated that he believed that he operated normally at a “hypermanic” level and that when depressed he would withdraw and stay to himself.⁵ Ex. 6 at 3. The DOE Psychiatrist noted that the Individual realized that if he does not take his medication he is subject to being explosive and violent. Ex. 6 at 4. Ex. 6 at 6. While he believed that the Individual could become violent when not on his medication, he found no evidence that the Individual was non-compliant with his medication. Ex. 6 at 6. He concluded that as long as the Individual was compliant with his medication there would no problems with the Individual. Ex. 6 at 7. The Individual was subsequently granted an access authorization in 2000. Ex. 11.

The Individual was reinvestigated in 2005 for a renewal of his access authorization. During this reinvestigation, the LSO discovered that the Individual had received outpatient treatment at a VA Hospital for his Bipolar disorder from 2000 onward. The LSO asked for an evaluation of the Individual by the DOE Psychologist. The DOE Psychologist examined the Individual in March 2006 and issued her report in April 2006 (2006 Report). In the 2006 Report, the DOE Psychologist diagnosed the Individual as suffering from “Bipolar Disorder, Not Otherwise Specified”, “Intermittent Explosive Disorder, By History,” “Personality Disorder, Not Otherwise Specified (Mixed Features)” and “Child Victim of Physical Abuse.” Ex. 3 at 15. During her examination, the Individual reported that he is usually slightly manic and that every once in a while he will do something “wild and extravagant” such as buying \$100 worth of movies. Ex. 3 at 4. When asked what he would do if his symptoms began to increase, he informed the DOE Psychologist that he would contact the VA 24-hour nurse call line for help. Ex. 3 at 4. Additionally, he would take time off from work to get his symptoms back under control. Ex. 3 at 4.

Upon reviewing her examination of the Individual and his security file along with the results of various psychological tests (the Minnesota Multiphasic Personality Interview-2 (MMPI-2) and the Personality Assessment Inventory (PAI)) she had administered, she believed that the Individual displayed characteristics of Borderline and Narcissistic Personality Disorders. Ex. 3 at 14. Specifically, she found that the Individual displayed the Borderline personality characteristics of “affective instability due to a marked reactivity of mood; . . . inappropriate, intense anger or difficulty controlling anger . . . , transient, stress-related paranoid ideation . . . a pattern of unstable, intense personal relationships.” Ex. 3 at 14. She also found that the Individual exhibited Narcissistic personality characteristics of “a grandiose sense of self-importance, expecting to be recognized as superior without commensurate achievements . . . shows haughty behaviors and attitude.” Ex. 3 at 14. Because the Individual did not meet all of the criteria for any one specific Personality Disorder, the DOE Psychologist diagnosed the

⁵ As an example of his “hypermanic” normal behavior, the Individual pointed out to the DOE Psychiatrist that in the course of 5 years he earned two Bachelors Degrees in Engineering and Political Science and had amassed 277 college credits. Ex. 6 at 3-4.

Individual as suffering from Personality Disorder, Not Otherwise Specified. Given all of her findings above, the DOE Psychologist concluded that the Individual suffered from mental illnesses that may cause a significant defect in his judgment and reliability.

IV. Analysis

Criterion H pertains to information that a person has “an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). In the present case, the LSO has based its findings on the DOE Psychologist’s 2006 Report which finds that the Individual is suffering from mental illnesses which may cause a significant defect in judgment and reliability.

The Individual seeks to mitigate the derogatory information presented by establishing that his Bipolar Disorder and Intermittent Explosive Disorder have been under control for a number of years without any incidents that would cast doubt on his judgment and reliability. To substantiate this assertion, the Individual presented witnesses to establish the fact that he has consistently acted with judgment and responsibility while coping with these illnesses. He also presented testimony from two psychiatrists who opined that the risk of the Individual demonstrating behavior of questionable judgment or reliability in the future because of his mental illnesses is low.

A. Hearing Testimony

At the hearing the Individual testified that, with regard to his diagnosis of Intermittent Explosive Disorder he has obtained an “incredible” change in his behavior after being prescribed carbamazepine in 1991. Tr. at 147. Since taking carbamazepine he has not had any violent physical conflicts with his wife. Tr. at 155. He is still taking carbamazepine and has had no side effects from it. Tr. at 147. With regard to his medication regime for his Bipolar Disorder, he has taken it faithfully since 1999 and asserts that his VA medical records confirm his claim. Tr. at 149; *see* Ind. Ex. A. He believes that to not take his medication would be in itself “antisocial behavior.” Tr. at 147. He also testified that in this period, since 1999, he has had a number of stressful situations and still has performed well at work. Tr. at 149. During this time, he has had access to classified materials and has not compromised any of that material. Tr. at 153.

The Individual’s wife testified that the Individual keeps all of his medication on his nightstand and she can instantly tell the number of medications he is currently taking. Tr. at 108. Many times she directly observes the Individual taking his medications at night. Tr. at 108. She also testified that the Individual is consistent in seeing his physicians. Tr. at 108. The Individual’s wife is proud of the Individual and respects him. Tr. at 110. She appreciates that he has worked hard to restore peace in their family. Tr. at 110.

The Individual’s supervisor of three years testified that the Individual is a good employee and that he gets along well with his fellow employees. Tr. at 84-85, 88-90. Despite the stress the Individual was placed under when his former employer lost contract, he continued to perform his

job without any loss of performance. Tr. at 84. The supervisor had no reason to question the Individual's judgment and reliability. Tr. at 87.

Prior to the hearing, the Individual employed a psychiatrist (Evaluative Psychiatrist) to conduct a psychiatric evaluation.⁶ The Evaluative Psychiatrist testified as to his findings that the Individual suffered from Bipolar Mood Disorder.⁷ He noted that he has been familiar with the Individual for a couple of years because he has treated members of the Individual's family, and that the Individual has been very responsible with regard to their treatment. Tr. at 96-97. The extent to which the Individual may exhibit impaired judgment is dependent on his faithfulness in taking his prescribed medication and being monitored by a physician. Tr. at 95. The Evaluative Psychiatrist noted that the Individual's strong sense of responsibility to himself and his family would make it likely that he would be compliant with his drug regimen. Tr. at 97, 101. In his opinion, the risk that the Individual would not be compliant with taking his medication is low. Tr. at 97. The risk that the Individual might suffer an impairment even while complying with his treatment would be low to moderate. Tr. at 98.

The Individual's Treating Psychiatrist, who is employed by the VA, testified that the Individual is seen by him or another psychiatrist at the VA approximately every three months at which time his blood levels for carbamazepine and lithium carbonate are determined. Tr. at 117. If the Individual needs to see someone sooner, he can schedule an appointment. Tr. at 118. He also believes that the Individual understands that if he does not take his medication, his judgment is going to lapse and he could make a mistake at his job or not have his current position at all. Tr. at 118-19. While some Bipolar sufferers who are "very, very disturbed" will take themselves off their medication when they start to feel better, the Individual is not that type of person. Tr. at 120. When asked about the risk that the Individual may exhibit questionable judgment, the Treating Psychiatrist answered:

I think -- yeah, I think that if he continues taking medication regularly, which he has been taking, and the level of the medication is monitored and is proper, I think the chances of the error of the judgment is very little to zero

Tr. at 122. The Treating Psychiatrist also believed that even if the Individual's medications were somewhat in error the chance that the Individual would make an error in judgment would be in the low to moderate range. Tr. at 122.

After listening to all of the testimony, the DOE Psychologist was asked about her own assessment that the Individual would exhibit questionable judgment in the future. She opined

I would like to say that what [the Individual] has said about taking his medication since he -- since 1999 religiously, not having any significant lapses in judgment or reliability during that time, even though he was under a great deal of stress, that that does speak very well for him. The question still that I was asked was may this

⁶ The Evaluative Psychiatrist also issued a written report of his findings. *See* Ind. Ex. C.

⁷ The Evaluative Psychiatrist did not make any finding with regard to any Personality Disorders in part because he did not feel he was an expert on those disorders. Tr. at 94. In his report, he also diagnosed the Individual as suffering from "Anxiety Disorder, NOS." Ind. Ex. C at 2.

possibly cause a problem in the future, and I still would go with exactly what I said before, which was low to moderate, tending more towards the low end

Tr. at 162.

B. Analysis

Upon my review of the evidence and testimony presented at the hearing, I find the Individual has presented sufficient evidence to resolve the derogatory information related to his diagnoses of Bipolar Disorder and Intermittent Explosive Disorder. In making this finding, I believe sufficient evidence has been presented for me to find that the relative risk of the Individual experiencing an incident of questionable judgment or behavior is low and that if the Individual does have a flare-up in his condition the Individual will behave in a responsible manner to rectify the occurrence.

All of the experts agree that the Individual suffers from Bipolar Disorder and Intermittent Explosive Disorder. The Individual has received effective treatment for these conditions since 1999. Since that time, there is no evidence in the record that the Individual has engaged in conduct that would indicate a defect in his judgment and reliability. All of the experts agree that the key to the Individual's continued steady conduct is a commitment to continue to take his medications and to maintain a monitoring relationship with a psychiatrist. The Individual's commitment to his drug regime is impressive. The record indicates that he had faithfully complied with his medications for an extended period of time. I have been convinced that the Individual has internalized the fact that he needs to continue to take his medications to function well. The Individual's testimony in this regard is supported by his comments to the DOE Psychologist during his evaluation to the effect that if a physician wanted to take him off these medications, he would immediately try to find another physician to continue to prescribe his medication. *See* Ex. 3 at 4. During this evaluation, the Individual told the DOE Psychologist that his need for medication was like that of a diabetic's need for Insulin. Ex. 3 at 4. The VA medical records (from 2000 to 2006) the Individual submitted indicate that he has been faithful in complying with his medications regime and the testing his psychiatrists have recommended. *See generally* Ind. Ex. A. The Individual's wife's testimony also confirms this. In their testimony the experts in this case assess the risk of the Individual having a failure in judgment as low. Consequently, I find that there is a relatively low risk that the Individual will not take the medications that control his Bipolar Disorder and his Intermittent Explosive Disorder. I also find therefore that the risk of the Individual demonstrating questionable behavior or judgment in the future is low.

The record also indicates that the Individual may experience minor bouts of mania or depression as a result of his Bipolar condition. However, since 1999, none of these episodes has resulted in any questionable incidents. This provides evidence that in the unlikely event that the Individual's drug regimen becomes less effective, there is a significant likelihood that the Individual will not suffer from a serious failure in judgment.

In sum, because I find that the Individual's Bipolar Disorder and Intermittent Explosive Disorder are well controlled and that the risk of the Individual demonstrating a lack of judgment

and reliability are low, I find that the Individual has resolved the security concerns raised by these diagnoses.⁸

V. CONCLUSION

As explained above, I find that the security concerns under Criterion H related to the Individual's diagnosis of Personality Disorder (Not Otherwise Specified), Bipolar Disorder and Intermittent Explosive Disorder have been resolved. I conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: March 6, 2007

⁸ As discussed above, the DOE Psychologist also diagnosed the Individual as suffering from Personality Disorder, Not Otherwise Specified. The Individual challenges this diagnosis with testimony from his Treating Psychiatrist along with his own testimony as to transient emotional factors that may have misled the DOE Psychologist in making the diagnosis. I need not decide this issue since the diagnosis of Personality Disorder contributed relatively little to the DOE Psychologist's assessment concerning the Individual's future reliability. When asked how much the diagnosis contributed to her assessment the DOE Psychologist answered "It contributes some. If it was a stand-alone diagnosis, that would be a different story . . ." Tr. at 161. To the extent, if any, that I must make a finding on this issue, I believe that the testimony of the Individual's Treating Psychiatrist is sufficient to resolve any potential security concern related to the diagnosis of Personality Disorder. *See* Tr. at 132-34 (testimony that the Individual did not suffer from Personality Disorder because of the lack of evidence that the maladaptive personality characteristics identified by the DOE Psychologist had surfaced early in the Individual's life or had affected the Individual's job performance or family life); Tr. at 48 (testimony that the Individual's alleged maladaptive personality characteristics at issue could be symptomatic of Bipolar Disorder itself).

